

THOMAS E. GAYNOR

IBLA 75-411

Decided July 25, 1975

Appeal from the decision of the Montana State Office, Bureau of Land Management, rejecting phosphate prospecting permit application M-31081.

Affirmed.

1. Oil Shale: Withdrawals

Once the U.S. Geological Survey has classified certain lands as containing deposits of oil shale, those lands are considered to be withdrawn by Executive Order 5327. In order to challenge such a classification, a clear showing of error is required.

2. Oil Shale: Withdrawals -- Phosphate Leases and Permits: Permits

An application for a phosphate prospecting permit is properly rejected upon a determination that lands applied for are withdrawn as oil shale lands by Executive Order 5327.

APPEARANCES: Thomas E. Gaynor, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Pursuant to 30 U.S.C. § 211(b) (1970), Thomas E. Gaynor filed phosphate prospecting permit application M-31081 for certain lands in T. 9 S., R. 9 W., M.P.M., with the Montana State Office, Bureau of Land Management, on February 21, 1975. Following rejection of his application by the State Office on March 5, 1975, appellant appealed to this Board.

The State Office rejected appellant's application because the lands are oil shale lands withdrawn "from lease or other disposal" by Executive Order 5327 (April 15, 1930). ^{1/} Appellant bases his appeal upon economic and policy reasons which, in the circumstances of this case, cannot serve as a basis for granting his application. We must, therefore, affirm the decision of the State Office.

E.O. 5327, supra, states:

Under Authority and pursuant to the provisions of the act of Congress approved June 25, 1910 (36 Stat. 847), as amended by the act of August 24, 1912 (57 Stat. 497), it is hereby ordered that subject to valid existing rights the deposits of oil shale, and lands containing such deposits owned by the United States, be, and the same are hereby, temporarily withdrawn from lease or other disposal and reserved for the purposes of investigation, examination, and classification.

This order shall continue in full force and effect unless and until revoked by the President or by act of Congress.

See 43 CFR 3170.0-1(a) (1968); Instructions, 53 I.D. 127 (1930). E.O. 5327 has been modified to some extent since it was issued, e.g., Executive Orders 7038 (May 18, 1935) and 6016 (Feb. 6, 1933), allowing sodium prospecting permits and leases and oil and gas leases to be issued for oil shale lands. See 43 CFR 3170.0-1(b), (c) (1968); Instructions, 55 I.D. 280 (1935). However, no exception has been made at this time for phosphate prospecting permits and leases.

[1] Once the U.S. Geological Survey (USGS) has classified certain lands as containing deposits of oil shale, those lands are considered to be withdrawn by E.O. 5327, supra. Heath B. Fowler, 8 IBLA 376, 377 (1972); Eugene V. Simons, A-30993 (March 3, 1969). In order to challenge such a USGS classification, a clear showing that USGS was in error is required. John W. Savage, 16 IBLA 53, 55 (1974); Heath B. Fowler, supra at 377; John R. Shelburne, 8 IBLA 115, 116 (1972).

^{1/} The State Office also rejected the February 21 application for improper form. Appellant corrected this and refiled the application properly on March 14, 1975. The March 5 decision also indicated that the 80 acres in sec. 24 covered by the application (N 1/2 NW 1/4) were not included in the withdrawal. Appellant's application with regard to this parcel is presently being processed by the Department and is not included in this appeal.

[2] The lands covered by appellant's application were classified as containing deposits of oil shale by USGS as of June 1, 1969. Appellant does not dispute this classification. Neither E.O. 5327, supra, nor any subsequent modifications thereof allow phosphate prospecting permits to be issued for withdrawn oil shale lands. Accordingly, the State Office properly rejected appellant's phosphate prospecting permit application as to the land in the withdrawal. Heath B. Fowler, supra; John R. Shelburne, supra; Eugene V. Simons, supra. In its letter of March 18, 1975, the State Office indicated to appellant that he could contact USGS to see if they would consider changing their classification. Appellant may also petition directly to the Secretary of the Interior to have the withdrawal order modified to permit phosphate prospecting and leasing. If appellant should be successful in either regard, he would have to file a new prospecting permit application for this application must be rejected and cannot be suspended. Further, appellant would retain no rights by having filed the application rejected here. 43 CFR 2091.1; Eugene V. Simons, supra; Eugene V. Simons, A-30993 (Supp.) (August 29, 1969).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joseph W. Goss
Administrative Judge

